

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by David Beaulieu,  
Commissioner, Department of Human  
Rights,

**ORDER AWARDING COSTS**

Complainant,

v.

Lloyd A. Wallin, D.D.S.,

Respondent.

A decision in the above-entitled matter was issued on March 22, 1996, in which it was determined that the Respondent engaged in an unfair discriminatory practice. The Order required the Complainant to submit a petition for hearing costs which he submitted on April 25, 1996. The Order also required the Respondent to submit a response to the petition which he filed on May 8, 1996.

Andrea Mitau Kircher, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101, appeared on behalf of the Complainant. Lloyd A. Wallin, D.D.S., Crest Ridge Dental, 50 East McAndrews Road, Burnsville, Minnesota 55337, represented himself.

**NOTICE**

Pursuant to Minn. Stat. § 363.071, subds. 2 and 3, and by stipulation of the parties, this Order is the final decision in this case. Under Minn. Stat. § 363.072, the Complainant, or any person aggrieved by this decision, may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.69.

## **ORDER**

IT IS HEREBY ORDERED:

1. That the Respondent shall pay to the Commissioner of the Minnesota Department of Human Rights the amount of \$24,695.18 for litigation and hearing costs.
2. That the litigation and hearing costs shall be paid within 60 days of the date of this Order.

Dated this 14th day of May, 1996.

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GEORGE A. BECK  
Administrative Law Judge

## **MEMORANDUM**

The Minnesota Human Rights Act requires the Administrative Law Judge to order a respondent to pay litigation and hearing costs. It provides, at Minn. Stat. § 363.071, subd. 7, that:

The Administrative Law Judge shall order a respondent who is determined to have engaged in an unfair discriminatory practice to reimburse the Department and the Attorney General for all appropriate litigation and hearing costs expended in preparing for and conducting the hearing, unless payment of the costs would impose a financial hardship on the respondent. Appropriate costs include, but are not limited to, the costs of services rendered by the Attorney General, private attorneys if engaged by the Department, Administrative Law Judges, court reporters, and expert witnesses, as well as the costs of transcripts and other necessary supplies and materials.

In its April 25, 1996 petition, the Department argues that an award of costs should be made in the total amount of \$24,695.18. It states that \$19,609.53 is the cost of services billed by the Office of Administrative Hearings to the Department in connection with this matter. These charges include time spent by the ALJ in preparing for the hearing, prehearing conferences, preparation of interim orders, presiding at the hearing, and preparation of and research for a written decision. The remainder of the costs claimed are court reporter charges for three depositions, including that of Dr.

Wallin, in the amount of \$624.65; court reporter charges for appearance time at the hearing and the preparation of hearing transcripts in the total amount of \$4,403.85; and payment of parking fees and travel mileage for three witnesses in the amount of \$57.15. The costs are documented by invoices and remittances.

In his written submission, Dr. Wallin argues that he should not have to pay for the depositions since he asked the state to use interrogatories in order to save costs. He also suggests that he should not pay for the hearing costs since he wanted to mediate this matter and what should have been a three-day hearing turned into a six-day hearing. Likewise, he did not himself order a hearing transcript, but rather used the one available at the Office of Administrative Hearings and therefore suggests that he should not have to pay for the Department's copy. Dr. Wallin also generally argues that his income is declining and that at age 55 his most productive years are behind him.

The Administrative Law Judge is required to award all appropriate litigation and hearing costs expended in preparing for and conducting a hearing unless the payment of the costs would impose a financial hardship on the Respondent. The OAH billing to the Department has been verified. Each of the costs claimed by the Department is appropriate. Depositions of three witnesses is not excessive for a case of this nature. A review of the record demonstrates that both the Department and the Administrative Law Judge needed a transcript of the hearing in this matter in order to prepare detailed findings and arguments. Likewise, the preparation of the transcript allowed Dr. Wallin to access it at the Office of Administrative Hearings to aide in the preparation of his written brief. The length of the hearing does not appear to be excessive and the record indicates that Dr. Wallin himself made extensive use of hearing time through cross examination and in calling witnesses. The costs presented by the Department, including the billing from the Office of Administrative Hearings, are appropriate within the language of the statute.

Dr. Wallin has failed to demonstrate that payment of these costs would be a financial hardship. Although Dr. Wallin urges that his income is declining, his 1995 tax return indicates that his salary last year amounted to \$133,234. In light of the Respondent's income and the relatively modest damages awarded to the Charging Party, it cannot be concluded that the Respondent will suffer financial hardship by being required to pay the litigation and hearing costs for this proceeding in which he was found to have engaged in an unfair discriminatory practice.

G.A.B.